

UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON

THOMAS DANIEL EUGENE HALE,

Plaintiff,

3:16-cv-1733-JR

v.

FINDINGS AND RECOMMENDATION  
and ORDER

STATE OF TENNESSEE, et al.,

Defendants.

RUSSO, Magistrate Judge.

Plaintiff, an inmate in a State of Tennessee penal institution, filed a civil complaint and moves to proceed in forma pauperis. Plaintiff's Application to proceed in forma pauperis (#1) is allowed. However, for the reasons set forth below, plaintiff's complaint should be dismissed on the grounds that it is frivolous and fails to state a claim.



### STANDARDS

A complaint filed in forma pauperis may be dismissed before service of process if it is deemed frivolous under 28 U.S.C. § 1915(d). Neitzke v. Williams, 490 U.S. 319, 324 (1989); Jackson v. State of Ariz., 885 F.2d 639, 640 (9th Cir. 1989). A complaint is frivolous "where it lacks an arguable basis in law or in fact." Neitzke, 490 U.S. at 325; Lopez v. Dept. of Health Services, 939 F.2d 881, 882 (9th Cir. 1991); Jackson, 885 F.2d at 640.

In determining whether a complaint is frivolous under § 1915(d), this court is mindful of the requirements to liberally construe the allegations of a pro se plaintiff and to afford the plaintiff the benefit of any doubt. Erickson v. Pardus, 551 U.S. 89, 84 (2007); Lopez, 939 F.2d at 883.

In order to state a claim, a complaint must contain sufficient factual matter which, when accepted as true, gives rise to a plausible inference that the defendant violated the plaintiff's constitutional rights. Ashcroft v. Iqbal, 556 U.S. 662 (2009); Atlantic Bell Corp. v. Twombly, 550 U.S. 544, 556-57 (2007). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Iqbal, 556 U.S. at 1952; Moss v. U.S. Secret Service, 572 F.3d 962, 969 (9<sup>th</sup> Cir. 2009).



### **DISCUSSION**

Plaintiff's complaint consists of several pages of illegible handwriting. It does not contain any complete sentences or any decipherable allegation of facts.

Despite this court's liberal consideration of plaintiff's complaint, it fails to state a claim.

### **CONCLUSION**

Plaintiff's complaint should be dismissed sua sponte on the grounds that it is frivolous and fails to state a claim.

This recommendation is not an order that is immediately appealable to the Ninth Circuit Court of Appeals. Any notice of appeal pursuant to Rule 4(a)(1), Federal Rules of Appellate Procedure, should not be filed until entry of the district court's judgment or appealable order. The parties shall have fourteen (14) days from the date of service of a copy of this recommendation within which to file specific written objections with the court. Thereafter, the parties have fourteen (14) days within which to file a response to the objections. Failure to timely file objections to any factual determinations of the Magistrate Judge will be considered a waiver of a party's right to de novo consideration of the factual issues and will constitute a waiver of a party's right to appellate review of the findings of fact in an order or judgment entered pursuant to the Magistrate Judge's



recommendation.

*Any appeal from an order adopting this Findings and Recommendation or Judgment dismissing this case would be frivolous and not taken in good faith. Therefore, plaintiff's in forma pauperis status should be revoked.*

DATED this 15<sup>th</sup> day of November, 2016.

  
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Jolie A. Russo  
United States Magistrate Judge